

Exhibit No. 1

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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:
BAIS YAAKOV OF SPRING VALLEY, :
ET AL., :
:
Petitioners, :
:
v. : No. 14-1234, et al.
:
FEDERAL COMMUNICATIONS :
COMMISSION, ET AL., :
:
Respondents. :
:
- - - - - X

Tuesday, November 8, 2016

Washington, D.C.

The above-entitled matter came on for oral argument
pursuant to notice.

BEFORE:

CIRCUIT JUDGES KAVANAUGH AND PILLARD, AND
SENIOR CIRCUIT JUDGE RANDOLPH

APPEARANCES:

ON BEHALF OF THE PETITIONERS:
AYTAN Y. BELLIN, ESQ.
MATTHEW A. BRILL, ESQ.

ON BEHALF OF THE RESPONDENTS:
MATTHEW J. DUNNE, ESQ.

ON BEHALF OF THE INTERVENORS:
ROBERT A. LONG, ESQ.

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C O N T E N T S

<u>ORAL ARGUMENT OF:</u>	<u>PAGE</u>
I. OPT-OUT REGULATION	
Matthew A. Brill, Esq. On Behalf of the Class Action Defendant- Petitioners and Intervenors	3; 37
Matthew J. Dunne, Esq. On Behalf of the Respondents FCC, et al.	17
Aytan Y. Bellin, Esq. On Behalf of the Intervenors Yaakov, et al.	25
II. WAIVER DECISION	
Aytan Y. Bellin, Esq. On Behalf of the Petitioners Yaakov, et al.	41; 77
Matthew J. Dunne, Esq. On Behalf of the Respondents FCC, et al.	56
Robert A. Long, Esq. On Behalf of the Waivers Intervenors	67

1 JUDGE PILLARD: But --

2 JUDGE KAVANAUGH: That goes to the first part of
3 the, I mean, the case today.

4 JUDGE PILLARD: But Mr. Long, assuming that they
5 do have this authority what about the question of whether
6 there's good cause here? Special circumstances, and a
7 public interest?

8 MR. LONG: Well, I mean, I, our position would be
9 that they need to show what they ordinarily would need to
10 show to grant a waiver, that is good cause, special
11 circumstances, and that the public interest favors it, and
12 there's a debate about that. We think that's, you know,
13 that's an abuse of discretion standard that gets applied,
14 which maybe again raises your questions about this is too
15 breathtaking an authority to give to the Agency, but I think
16 it's, you know, what the Agency ended up saying was there
17 was confusion or misplaced confidence that the rule didn't
18 apply, and I would submit that even careful lawyers when you
19 read this you could come away with misplaced confidence that
20 all of this stuff is regulating unsolicited faxes, and --

21 JUDGE PILLARD: I believe they even gave the
22 waiver to entities that said oh, we just didn't know. Just
23 total ignorance of the standard. Not confusion, not even
24 aware that there's an obligation, but they get the waiver
25 also. Good cause? It's a little tough.

1 JUDGE RANDOLPH: -- of the other circuits.

2 MR. LONG: -- check that, and if my, what I think
3 is the answer turns out to be wrong I will submit a letter,
4 do whatever is appropriate to get that information to the
5 Court.

6 JUDGE KAVANAUGH: Okay. Thank you very much, Mr.
7 Long.

8 MR. LONG: Thank you.

9 JUDGE KAVANAUGH: Mr. Bellin, we'll give you two
10 minutes for rebuttal.

11 ORAL ARGUMENT OF AY TAN Y. BELLIN, ESQ.

12 ON BEHALF OF THE PETITIONERS YASKOV, ET AL.

13 MR. BELLIN: Thank you. Just on the
14 jurisdictional question, Your Honor, this is a Hobbs Act
15 case, so the appeal could be from the, what would happen is
16 you have to go through the Agency, and then you can go to
17 Circuit Court of Appeals, either the D.C. Circuit, or one
18 where I believe that the Petitioner is from, and I think
19 either one, in this case it was a raffle because it was
20 between the Eighth Circuit and here, and the D.C. Circuit,
21 you won the privilege to have this case, Your Honor, I'm
22 sorry to say.

23 JUDGE RANDOLPH: Lucky us.

24 MR. BELLIN: I want to point out something,
25 correct Mr. Long, which I'm sure was inadvertent, there is

1 nothing in the order that says ignorance of the TCPA you
2 don't get a waiver. That's something that the Bureau seems
3 to have created later on that's not in the record here, in
4 fact, in one of my own cases the Amicus mediation case, if
5 you look at the comments, in depositions there they said
6 they didn't know about the TCPA, and they got a waiver
7 anyway. So, that's not what the rule is.

8 Number two, the extent of -- I've got to tell you
9 honestly, I didn't see that footnote, Your Honor, and I
10 don't think anybody else did either. So, to say that we
11 were relying on something that we should have relied on we
12 relied on case law that says that if the regulation is clear
13 it's got to be enforced. And even if I had seen the
14 footnote I would have relied on the cases of this Court that
15 say gee, footnote is inconsistent with the text of the
16 order, you go by the order; and I would have also relied on
17 the decisions of this Court that say if the regulation is
18 clear then even if the order is unclear you go by the
19 regulation. I mean, the notion that a lawyer who looked at
20 this, with that clear case law out there would be confused
21 as to what's to be done, is really, it's really
22 unimaginable, Your Honor.

23 In any event, this is a separation of power, there
24 is no proof that *WAIT Radio* and *Northeast Cellular* said that
25 petitioners for a waiver have a heavy burden, they haven't

DIGITALLY SIGNED CERTIFICATE

I certify that the foregoing is a correct transcription of the electronic sound recording of the proceedings in the above-entitled matter.



Paula Underwood

November 10, 2016

DEPOSITION SERVICES, INC.